

I. Rejections Under 35 U.S.C. § 102(a)

Claims 1-2 are rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by Marth et al. (*J. Exp. Med.* 185:1987-1995, June 2, 1997). Specifically, the Office Action states that Marth et al. teaches a method of suppressing IL-12 production and its associated inflammatory response (as shown by the suppression of IFN-gamma production) in a murine model of septic shock by treatment with CR3 antibodies. Therefore, the Office Action contends that the referenced teachings allegedly anticipate the claimed invention.

The Office Action further states that applicants' arguments that this rejection is improper because the authors of the reference are both named inventors is not deemed persuasive. The Office Action goes on to state that the authorship is only Marth and Kelsall, while the inventors include Strober and Fuss as well as Marth and Kelsall.

Applicants assert that the claimed invention was conceived and reduced to practice prior to the June 2, 1997 publication date of the Marth et al. reference. Specifically, applicants provide herewith as Exhibit I, the Declaration under 37 C.F.R. § 1.131 of Drs. Brian Kelsall, Warren Strober, Thomas Marth and Ivan Fuss, whereby they declare that prior to June 2, 1997, they conceived and reduced the claimed invention to practice in the United States of America as evidenced by the following:

The co-inventors conceived and reduced the invention to practice in the Mucosal Immunity Section of the Laboratory for Clinical Investigation of the National Institute for Allergy and Infectious Diseases of the National Institutes of Health, USA, as shown in Exhibit A, attached to the Declaration. Specifically, Exhibit A is a document that the co-inventors submitted with an Employee Invention Report to the Office of Technology Transfer of the National Institutes of Health prior to June 2, 1997. This document (with irrelevant text blanked out) describes experiments conducted in the co-inventors' laboratories and data from these

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studies which demonstrate the downregulation of IL-12 production by administration of a ligand of CR3 in both an animal model of septic shock and in an animal model of autoimmune disease.

The evidence set forth in the present Declaration is sufficient to demonstrate that the claimed invention was conceived and reduced to practice prior to the June 2, 1997 publication date of Marth et al. Thus, the Marth et al. reference is not available as prior art in a rejection of the claims of the present invention under 35 U.S.C. § 102(a). Therefore, applicants believe this rejection has been rendered moot and respectfully request its withdrawal.

II. Rejection under 35 U.S.C. § 103(a)

Claims 1-8 and 10 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Marth et al. (*J. Exp. Med.* 185: 1987-1995, June 2, 1997) in view of Neurath et al. (*J. Exp. Med.* 182: 1281-1290, 1995) and Duchmann et al. (*Eur. J. Immunol.* 26: 934-938, 1996).

As set forth above, the Declaration under 37 C.F.R. § 1.131 of Drs. Brian Kelsall, Warren Strober, Thomas Marth and Ivan Fuss, provided herewith as Exhibit I, demonstrates that the claimed invention was conceived and reduced to practice prior to the June 2, 1997 publication date of Marth et al.

In particular, the Declaration states that the co-inventors conceived and reduced the invention to practice in the Mucosal Immunity Section of the Laboratory for Clinical Investigation of the National Institute for Allergy and Infectious Diseases of the National Institutes of Health, USA, as shown in Exhibit A, attached to the Declaration. Specifically, Exhibit A is a document that the co-inventors submitted with an Employee Invention Report to the Office of Technology Transfer of the National Institutes of Health prior to June 2, 1997. This document (with irrelevant text blanked out) describes experiments conducted in the co-inventors' laboratories and data from these studies which demonstrate the downregulation of IL-12

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production by administration of a ligand of CR3 in both an animal model of septic shock and in an animal model of autoimmune disease.

The evidence set forth in the present Declaration demonstrates that the claimed invention was conceived and reduced to practice prior to the June 2, 1997 publication date of Marth et al. Therefore, Marth et al. is not available as prior art in a rejection of the claims of the present invention under 35 U.S.C. § 103. The remaining cited references (Neurath et al. and Duchmann et al.), either alone or in combination, do not provide any teaching or suggestion to produce the claimed invention and thus the invention of claims 1-8 and 10 could not have been obvious to one of ordinary skill at the time this invention was made. For these reasons, applicants believe this rejection has been overcome and respectfully request its withdrawal.

Pursuant to the above amendments and remarks, reconsideration and allowance of the pending application is believed to be warranted. The Examiner is invited and encouraged to directly contact the undersigned if such contact may enhance the efficient prosecution of the application to issue.

No fee is believed due; however, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: BOX NON-FEE AMENDMENT, Assistant Commissioner for Patents, Washington, D.C. 20231, on the date shown below.

Mary L. Miller
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September 29, 2000
Date